

Draft Revision of Civil Service Rules 2-14 and 9-1

Rights of Employees Absent Due to Service in the Uniformed Services

Revision A — April 19, 2005

Added text is double-underlined. Deleted text is ~~struck-through~~.

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2-14 Rights of Employees Absent Due to Service in the Uniformed Services

2-14.1 Basic Employment and Return-to-work Rights and Benefits

(a) Regulations. The state personnel director shall issue regulations to provide employment and return-to-work rights and benefits for employees who are absent from a classified position due to service in the uniformed services. The regulations shall provide rights and benefits that are consistent with rights and benefits provided under applicable federal law, except where this rule provides supplemental or enhanced rights and benefits that exceed the minimum requirements of applicable federal law.

(b) Military leave of absence. The regulations shall authorize a military leave of absence for an employee absent from a classified position due to service in the uniformed services, subject to the requirements of the regulation.

(c) Effect on federal rights and benefits. The civil service rules and regulations shall not be applied or interpreted to limit, reduce, or eliminate any right or benefit under applicable federal law.

(d) Character of rights and benefits in the rules and regulations. The rights and benefits granted in this rule and the regulations are granted solely under the authority of the civil service commission and the state personnel director and are not rights or benefits under federal law.

2-14.2 Eligibility for Supplemental Pay

An employee granted a military leave of absence or deemed to be on a military leave of absence under the applicable regulations is eligible for supplemental pay, as provided in this rule and the applicable regulations.

(a) Supplemental pay for training duty.

(1) Eligibility. An employee in a career appointment who is a member of a reserve or national guard unit and is ordered to active or inactive duty training is entitled to supplemental pay for each day of absence from scheduled employment in the classified service, unless prohibited in subsection (c).

(2) Limits. Supplemental pay for training duty is payable for up to the equivalent of 15 scheduled workdays in any fiscal year.

(b) Supplemental pay for emergency active duty.

(1) Eligibility. An employee in a career appointment who is a member of a reserve or national guard unit and (1) is ordered to emergency active duty by the governor or

1 president or (2) volunteers for emergency active duty is entitled to supplemental pay,
2 unless prohibited in subsection (c).

3 (2) **Limits.** Supplemental pay is payable during the first 30 consecutive calendar days
4 of service in any fiscal year, unless otherwise extended under subsection (b)(3).

5 (3) **Special pay provisions for active duty between September 11, 2001, and**
6 **September 30, 2006.** Notwithstanding the 30-day limit in subsection (b)(2), an
7 employee who enters emergency active duty after September 11, 2001, is eligible for
8 supplemental pay for any period of active duty in the uniformed services between
9 September 11, 2001, and September 30, 2006, except as further limited below:

10 (A) **Limited-term position without prior status.** If the employee occupies a
11 limited-term position but does not have continuing status from a prior indefinite
12 appointment, the supplemental pay expires on the earliest of (1) the employee's
13 release from active duty in the uniformed services, (2) the expiration of return-
14 to-work rights under this rule, (3) the expiration of the limited-term
15 appointment in the classified service, or (4) September 30, 2006.

16 (B) **Indefinite position or limited-term position with prior status.** If the
17 employee occupies an indefinite position or a limited-term position with
18 continuing status from a prior indefinite appointment, the supplemental pay
19 expires on the earliest of (1) the employee's release from active duty in the
20 uniformed services, (2) the expiration of return-to-work rights under this rule,
21 or (3) September 30, 2006.

22 (c) **Disqualification.** Notwithstanding any other rule or regulation, an employee is not
23 eligible for supplemental pay during any of the following periods:

24 (1) Any period of unpaid service in a uniformed service.

25 (2) Any period following discharge from a uniformed service and before returning to
26 work in the classified service.

27 2-14.3 Types of Supplemental Pay

28 (a) **Pay differential.** An employee eligible for supplemental pay is paid a pay differential
29 for each day of absence from scheduled employment in the classified service.

30 (1) **Computation of pay differential.** A pay differential equals the difference between
31 the employee's (1) gross basic pay in the uniformed service and (2) gross base wage
32 in the classified service on the employee's last day of work. No pay differential is
33 paid for any period where the employee's gross basic pay in the uniformed service
34 exceeds the employee's gross base wage in the classified service.

35 (1) **Base wage.** The employee's base wage in the classified service includes only the
36 employee's base rate of pay. The following pay and premiums are not included in
37 the employee's base rate of pay when computing a pay differential:

1 (A) Overtime pay [rule 5-4.2].

2 (B) On-call pay [rule 5-4.3].

3 (C) Callback pay [rule 5-4.4].

4 (D) Shift differential premium [rule 5-4.5].

5 (E) Prison duty premiums [rule 5-5].

6 (F) Hazardous duty premium [rule 5-6.1].

7 (G) Explosives duty premium [rule 5-6.2].

8 (H) Out-of-state location premiums [rules 5-6.3, 5-6.4, and 5-6.5].

9 (I) Emergency response compensation [rule 5-6.6].

10 (J) Expense reimbursements [rule 5-7].

11 (2) Increase in base wage. During a military leave of absence, the employee's base
12 wage is increased as if the employee had remained continuously employed in the
13 classified service, including (1) any general wage increase approved by the civil
14 service commission and (2) any step increase for which the employee would have
15 been eligible.

16 (b) Supplemental holiday pay. An employee eligible for supplemental pay is paid the
17 employee's base wage for a designated state holiday that occurs or is observed during a
18 period of eligibility. Holiday pay is paid in full and is in addition to any pay differential.

19 (c) Supplemental longevity payment. An employee eligible for supplemental pay is paid
20 the longevity payment authorized under rule 5-8 [Longevity Payment] if the pay date occurs
21 during a period of eligibility.

22 (d) Supplemental leave accruals. An employee eligible for supplemental pay is credited
23 with annual and sick leave accruals as if the employee had remained continuously
24 employed in the classified service. Accruals are credited only for the first 15 days of
25 eligible training duty under rule 2-14.2(a) and the first 30 days of eligible emergency
26 military duty under rule 2-14.2(b).

27 2-14.4 Payment of Supplemental Pay

28 (a) Payment and documentation.

29 (1) First 30 days. For the first 30 days of any qualifying service in the uniformed
30 services, the appointing authority may estimate the employee's supplemental pay.
31 Within 28 calendar days after the date the employee returns to work or is
32 reemployed, the employee must submit official documentation indicating (1) the
33 period during which the employee was paid for service in the uniformed services
34 and (2) the amount of the employee's gross pay for that service.

1 (2) After 30 days. After the first 30 days of any qualifying service in the uniformed
2 services, supplemental pay is not payable until the employee submits official
3 documentation indicating (1) the period during which the employee was paid for
4 service in the uniformed services and (2) the amount the employee's gross pay for
5 that service.

6 (3) Corrections and disqualification. If an employee fails to submit adequate
7 documentation to support an estimated payment, the appointing authority shall
8 promptly recover the estimated supplemental pay. If, after adequate documentation
9 is submitted, the appointing authority determines that the estimated amount of
10 supplemental pay was incorrect, the appointing authority shall promptly pay any
11 underpayment or recover any overpayment.

12 (c) Deductions. Supplemental pay is subject to deductions required by law.

13 (d) Uniform method. The state personnel director shall provide a uniform method of
14 computing supplemental pay.

15 (e) Centralized review. The state personnel director may require employees to submit
16 requests for supplemental pay for centralized review and approval.

17 (f) Prospective amendments. An employee who becomes eligible for a benefit under this
18 rule or the applicable regulations as a result of an amendment to the rules or regulations
19 is entitled to the benefits prospectively from the effective date of the amendment and not
20 retroactively.

21 2-14.5 Supplemental Continuation of Group Health, Dental, and 22 Vision Insurance

23 If an employee or eligible dependent is participating in a group medical, dental, or vision plan
24 when the employee's absence due to service in a uniformed service begins, the employee may
25 elect to continue coverage under the plan as provided in this rule and the regulations.

26 (a) 30 or fewer calendar days of service. If the employee is absent for 30 or fewer
27 calendar days of service during a fiscal year, the employee may elect to continue
28 coverage by paying the employee's portion of the cost (if any) of continuing coverage.

29 (b) 31 or more days of service. If the employee is absent for 31 or more days, the employee
30 may elect to continue coverage by paying the following share of the cost of continuing
31 coverage, as appropriate:

32 (1) Eligible for supplemental pay. If an employee is eligible for supplemental pay, the
33 employee pays only the employee's portion of the cost.

34 (2) Not eligible for supplemental pay. If the employee is not eligible for supplemental
35 pay or is disqualified under rule 2-14.2(c), the employee may continue coverage by
36 paying 102 percent of the full cost of the coverage. Such coverage expires on the
37 earlier of the following:

1 (A) 24-months after the date that the employee's absence from the classified service
2 began.

3 (B) The day after the last date for the employee to return to work or give notice of
4 readiness to return to work, as determined under the regulations.

5 **(c) Exclusions and waiting periods.**

6 **(1) No exclusions or waiting period on returning to work.** Except as provided in
7 subsection (c)(2), an employee whose coverage under a group health plan was
8 terminated by reason of service in the uniformed services cannot have an exclusion
9 or waiting period imposed in connection with the reinstatement of the coverage upon
10 returning to work under this rule. This subsection applies to the employee who
11 returns to work and to any dependent who is covered by the health plan by reason of
12 the reinstatement of the coverage of the employee.

13 **(2) Exception for service-connected injuries.** The prohibition in subsection (c)(1)
14 does not apply to the coverage of any illness or injury incurred in or aggravated
15 during a period of service in the uniformed services.

16 **2-14.6 Supplemental Coverage for State National Guard Duty**

17 An employee who is a member of a national guard unit and is ordered to emergency active
18 duty by the governor or volunteers for such state duty is entitled to the employment and
19 return-to-work rights and benefits provided in this rule and the applicable regulations even if
20 the employee is not entitled to similar rights or benefits under federal law.

21 **2-14.7 Enforcement**

22 **(a) Complaints.**

23 **(1) Grievance.** Except as provided in subsection (a)(2), an employee who is entitled
24 under this rule or the regulations to return-to-work rights or benefits and who claims
25 that an appointing authority has failed or refused, or is about to fail or refuse, to
26 comply with the provisions of this rule or the regulations, may file a grievance and
27 grievance appeal as authorized in the rules and applicable regulations.

28 **(2) Technical complaint.** A person, whether or not a classified employee, who is
29 entitled to employment or return-to-work rights or benefits under the regulations and
30 has a complaint regarding a technical decision may file a technical complaint as
31 authorized in the rules and the regulations.

32 **(b) Stay of proceedings.** A grievance or technical complaint under this rule or the
33 regulations concerning employment or return-to-work rights or benefits due to service in
34 the uniformed services is automatically stayed if any of the following proceedings are
35 initiated under applicable federal law concerning any of the same period of service in the
36 uniformed services alleged in the grievance or technical complaint:

1 (1) An investigation by the United States Secretary of Labor in response to a complaint
2 filed by the employee.

3 (2) A state or federal civil action filed by the employee against the State of Michigan or
4 any of its departments, boards, or commissions.

5 (3) A state or federal civil action filed by the United States on behalf of the employee
6 against the State of Michigan or any of its departments, boards, or commissions.

7 (d) **Summary dismissal of grievance.** If an employee receives a final judgment on a claim
8 in a civil action brought against the State of Michigan or any of its departments, boards,
9 or commissions under applicable federal law concerning employment or return-to-work
10 rights or benefits due to service in the uniformed services, a grievance or technical
11 complaint under this rule or the regulations by the employee regarding any of the same
12 period of service in the uniformed services may be summarily dismissed in whole or in
13 part on the basis of claim preclusion or issue preclusion, as appropriate.

14 (e) **No waiver.** This rule does not constitute a waiver of the sovereign immunity of the State
15 of Michigan under the United States Constitution.

17 ~~2-14—Veterans' Preference and Military Leave~~

18 * * *

19 ~~2-14.3—Regular Military Leave of Absence~~

20 ~~(a) **General provisions; without pay.** A classified employee in an indefinite appointment~~
21 ~~who enters military service in the armed forces of the United States under the provisions~~
22 ~~of the selective service law, by call to duty, or by voluntary entrance in lieu of being~~
23 ~~called to duty, is entitled to a military leave of absence for the period of time required to~~
24 ~~fulfill the military obligation. The regular military leave of absence is without pay or~~
25 ~~benefits, except as provided in subsection (b). If the employee voluntarily remains in~~
26 ~~military service beyond the time required by selective service law, the leave and right to~~
27 ~~restoration to the position formerly occupied or an equivalent position automatically~~
28 ~~terminates. Continuous state service credit is allowed for the period of the military leave~~
29 ~~of absence.~~

30 ~~(b) **Special provisions between September 11, 2001, and September 30, 2005.** If an~~
31 ~~employee is granted an emergency military leave of absence after September 11, 2001,~~
32 ~~and thereafter is placed on a regular military leave of absence, the employee is entitled to~~
33 ~~the regular military leave of absence with pay for any active duty period between~~
34 ~~September 11, 2001, and September 30, 2005. The leave is with pay if the military pay is~~
35 ~~less than the employee's regular state salary, for each day of absence from scheduled~~
36 ~~state employment. The pay is equivalent to the difference between the employee's~~
37 ~~military pay and regular state salary. During any period of military leave with pay, the~~

~~employer shall also continue to pay the employer's portion of the cost of continuing group medical, dental, and vision insurance.~~

~~2-14.4—Return from Regular Military Leave of Absence~~

~~To return to the classified service, the veteran must apply in writing to the appointing authority within 6 months after release from active duty in the armed forces or discharge from veterans' hospital. The appointing authority shall restore the veteran to the position formerly occupied or an equivalent position within 30 calendar days of the filing of such application.~~

~~2-14.5—Temporary Military Leave of Absence~~

~~An appointing authority shall grant a temporary military leave of absence to a classified employee occupying an indefinite position who is in a reserve component of the United States armed forces when ordered to active or inactive duty training. A temporary military leave of absence for active duty training is with pay if the military pay is less than the employee's regular state salary. The pay is equivalent to the difference between the employee's military pay and the regular state salary for each day of absence from scheduled state employment for those same days. The leave cannot exceed 15 regularly scheduled workdays in any fiscal year. Continuous state service credit is allowed for the period of temporary military leave of absence.~~

~~(a) If active duty training exceeds 15 regularly scheduled work days in a fiscal year, the employee may choose to be placed on regular military leave of absence without pay or use annual or compensatory time accruals for the remainder of the period of training. The leave and the right to restoration to the position formerly occupied or an equivalent position terminates if the employee fails to return to the classified position within 15 calendar days after release from training duty or after discharge from hospitalization incident to that training. Continuous state service credit is allowed for the period of the military leave of absence without pay.~~

~~(b) **Holidays occurring during temporary military leave.** An employee in full pay status is entitled to holiday pay for a designated holiday that occurs or is observed during the period of a temporary military leave of absence. Military pay earned on a holiday is not considered in determining the amount of state salary for the holiday.~~

~~2-14.6—Emergency Military Leave of Absence~~

~~An appointing authority shall grant an emergency military leave of absence to a classified employee in an indefinite appointment who is a member of a reserve component of the armed forces and is ordered to perform emergency duty, by compulsory call of the governor or the president. The leave is with pay if the military pay is less than the employee's regular state salary, for each day of absence from scheduled state employment. The pay is equivalent to the difference between the employee's military pay and regular state salary. Pay is limited to 30 calendar days. Holiday pay is handled as prescribed in rule 2-14.5(b). If the emergency~~

~~duty exceeds 30 calendar days, the employee may choose to be placed on regular military leave of absence without pay or use annual leave or compensatory time accruals for the remainder of the duty period. After release from emergency duty, the employee is restored immediately to the position formerly occupied. Continuous state service credit is allowed for the period of emergency military leave of absence.~~

~~2-14.7—Educational Leave~~

~~An appointing authority may grant a leave of absence without pay to a veteran who has completed the equivalent of 6 months in the classified service to take advantage of the educational grants made available by federal funds for veterans' education.~~

~~2-14.8—Abolishment of Positions~~

~~If the former position has been abolished, the veteran is entitled to another position in accordance with the civil service rules and regulations governing employment preference.~~

~~2-14.9—Reclassification~~

~~If the former position has been reclassified either higher or lower, the veteran has the same rights with respect to the reclassified position as would have applied had there been no interruption of state service.~~

~~2-14.10—Combining of Positions~~

~~If the former position has been combined with another position, the veteran's right to the combined position with respect to its present incumbent is determined in accordance with the civil service rules and regulations governing employment preference.~~

~~2-14.11—Examination upon Return~~

~~A veteran returning from military leave has the right to take any examination given during that leave for which the veteran would have been eligible had there been no interruption of state service. The request for examination must be made within 6 months after return to state service.~~

~~2-14.12—State Service~~

~~For employment preference purposes, a regular military leave of absence is considered as state service in the same position and department where the veteran was employed when inducted in the armed forces.~~

~~2-14.13—Salary Step Increase~~

~~If the last service rating of a veteran returning from military leave was satisfactory, the veteran is placed at the salary step that would have applied had there been no interruption of state service.~~

~~2-14.14—Military Leave for Limited-term Employees~~

~~An appointing authority shall grant a military leave of absence to a classified employee in a limited-term appointment who is a member of a reserve component of the armed forces and is ordered to perform emergency duty, by compulsory call of the governor or the president, as provided below:~~

~~(a) Employee with continuing status; emergency and regular military leave.~~ An employee in a limited-term appointment who has continuing status gained from an indefinite appointment is entitled to an emergency and regular military leave of absence in the same manner as provided in these rules for an employee in an indefinite appointment.

~~(b) Employee without continuing status; limited-term military leave.~~ An employee in a limited-term appointment who does not have continuing status gained from an indefinite appointment and has at least 6 months continuous service in the limited-term appointment is entitled to a limited-term military leave of absence, as provided below:

~~(1) Without pay.~~ The limited-term military leave of absence is without pay or benefits, except as provided in subsection (c).

~~(2) Expiration and extension.~~ The limited-term military leave of absence cannot continue beyond the date the limited-term appointment would have expired. However, an appointing authority may extend the limited-term appointment during the limited-term military leave of absence and, in such case, the limited-term military leave of absence continues until the end of the approved extension.

~~(3) Use of other accruals.~~ An employee granted a limited-term military leave of absence may choose to use annual leave or compensatory time accruals before beginning the limited-term military leave of absence.

~~(4) Reemployment.~~ To return to the classified service, the veteran must apply in writing to the appointing authority within 28 calendar days after release from active duty in the armed forces or discharge from a veterans' hospital. After applying for reemployment, the employee is restored immediately to the limited-term position formerly occupied, unless the appointment has expired or the position has been abolished.

~~(5) Service credit.~~ Continuous state service credit is allowed for the period of the limited-term military leave of absence.

~~(c) Special provisions between September 11, 2001, and September 30, 2005. If an employee is granted a limited term military leave of absence after September 11, 2001, the employee is entitled to the limited term military leave of absence with pay for any active duty period between September 11, 2001, and September 30, 2005. The leave is with pay if the military pay is less than the employee's regular state salary, for each day of absence from scheduled state employment. The pay is equivalent to the difference between the employee's military pay and regular state salary. During any period of military leave with pay, the employer shall also continue to pay the employer's portion of the cost of continuing group medical, dental, and vision insurance. Salary and benefit continuation payments authorized in this subsection expire on the earlier of (1) the date the limited term military leave of absence expires or (2) September 30, 2005.~~

9-1 Definitions

Unless the context clearly provides otherwise, the following terms in the civil service rules and regulations are defined as follows:

* * *

Emergency Active Duty

Emergency active duty means active duty in a uniformed service in support of emergency operations during a national emergency declared by the president, state emergency declared by the governor, or war declared by the United States Congress.

Service in the Uniformed Services

Service in the uniformed services means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty, a period for which an employee is absent from employment for the purpose of an examination to determine the fitness of the employee to perform any such duty, and a period for which an employee is absent from employment for the purpose of performing funeral honors duty as authorized under applicable federal law [10 USC §12503 or 32 USC §115].

Seniority

Seniority means longevity in employment together with any benefits of employment which accrue with, or are determined by, longevity in employment.

* * *

Uniformed Services

Uniformed services means all of the following:

(~~a~~1) ~~†~~The armed forces of the United States, including the army, navy, marine corps, air force, coast guard, army reserve, naval reserve, marine corps reserve, air force reserve, and coast guard reserve.

(~~b~~2) ~~†~~The army national guard and the air national guard when engaged in federal or state active duty for training, inactive duty training, or full-time national guard duty.~~;~~

(~~c~~3) ~~†~~The commissioned corps of the public health service.~~;~~~~and~~

(~~d~~4) ~~a~~Any other category of persons designated by the president in time of war or national emergency.
